

REMARKS

Claims 1-6, 9, 10 and 13-26 are now in the application. Claim 5 has been amended to be dependent upon claim 3. The amendment to claim 5 finds basis at page 5, line 33 to page 6, line 2, and, page 31, line 31 to page 32, line 7 of the specification. Newly presented claim 23 is the same as amended claim 5 except that it depends from claim 1. Newly presented claims 24, 25 and 26 are the same as claims 6, 21 and 22, respectively except that they depend from newly presented claim 23. Also these claims find support at page 10, lines 12 to 21 and page 31, line 31 to page 32, line 7 of the specification. In addition, claims 25 and 26 find basis at page 42, lines 27-32 and page 44, lines 11-31, respectively. The amendments to the claims and newly presented claims do not introduce any new matter.

The rejections of Claims 1-6, 9, 10, 13-17, 19 and 21 under 35 U.S.C. 102(e) as being anticipated by WO 2004/099100 to Nishikawa et al.; of Claims 18-20 and 22 under 35 U.S.C. 103(a) as being unpatentable over WO 2004/099100 to Nishikawa et al. in view of US Patent Application Publication 2004/0107876 to Tomita et al. and of Claims 13 and 14 under 35 U.S.C. 103(a) as being obvious over WO 2004/099100 to Nishikawa et al., have been overcome by the filing of the verified English translation of the Japanese priority application JP2003-376183, filed November 5, 2003, which is prior to May 7, 2004, the filing date of WO2004/099100.

Since independent claims 1 and 3 are supported by the priority application, WO2004/099100 is disqualified as prior art under 35 U.S.C. 102(e). Accordingly, the independent claims are patentable as well as claims 2, 4, 5, 6, 9, 10 and 13-26 which ultimately depend on claim 1 or claim 3. The filing of the certified translation is not to be construed as an admission, estoppel or acquiescence. Please see *Credle v. Bond* 23 F. 3d 1566; 30 USPQ 2d. 1911 (Fed. Cir. 1994) and *Greenwood v. Hattori Seiko Co. Ltd.* 14 USPQ2d 1474, (Fed. Cir. 1990).

The rejection of Claims 13 and 14 on the ground of obviousness-type double patenting over claim 1 of US Patent 7,368,488 to Nishikawa et al. has been overcome by the filing of a Terminal Disclaimer. The filing of the Terminal Disclaimer is not to be construed as an admission, estoppel or acquiescence. See *Motionless Keyboard Co. v. Microsoft Corp.* 486 F.3d

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1376 ((fed Cir 2007) *GoLight, Inc. v Wal-Mart Stores, Inc.* 355 F.3d. 1327; 69 USPQ 2d. 1481 (Fed. Cir. 2004), *Quad Environmental Technology v. Union Sanitary District*, 20 USPQ2d 1392 (Fed. Cir. 1991) and *Ortho Pharmaceuticals Corp. v. Smith*, 22 USPQ2d 1119 (Fed. Cir. 1992).

In view of the above, consideration and allowance are respectfully solicited.

In the event the Examiner believes an interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

The Office is authorized to charge any necessary fees to Deposit Account No. 22-0185, under Order No. 21581-00361-US1 from which the undersigned is authorized to draw.

Dated: April 28, 2010
BAA

Respectfully submitted,

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